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**In the  
Supreme Court of the United States**

OCTOBER TERM, 1978

No. **78-1334**

**LESLIE J. WEISS,**  
PETITIONER,

**v.**

**THEODORE R. PATRICK, JR., ALIAS JOHN DOE AND  
ALBERT TURNER, ALIAS RICHARD ROE**  
RESPONDENTS

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**RESPONDENTS OPPOSITION TO PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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The Respondents, Theodore R. Patrick, Jr. and Albert Turner, respectfully prays that the petition for Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on November 29, 1978 be denied.

**Opinion Below**

The Opinion of the Court of Appeals 588 F.2d 818 [a decision without published opinion] (First Circuit, 1978) appears in the Appendix of the Petition. The opinion of the United States District of Rhode Island, 453 F. Supp. 717 (1978) appears in the Appendix of the Petition.

### Jurisdiction

Respondents assert a lack of jurisdiction under 28 U.S.C. § 1245(1). A Writ of Certiorari is not granted as a matter of right. Supreme Court Rule 19 requires there be "special and important reasons" for the granting of the Writ. The issues in this matter do not reach constitutional dimensions necessary for the grant of such a Writ.

### Questions Presented

1. That the District Court's findings of facts are not clearly erroneous and should be left undisturbed.
2. That the court need not reach the claimed constitutional issues on these facts.

### Statement of the Case

On June 1, 1978 the District Court of Rhode Island dismissed the complaint and entered judgment for the defendants. 453 F. Supp. 717 (1978).

On November 29, 1978, the First Circuit Court of Appeals affirmed the District Court opinion by a *Pes Curiam* decision. 588 F.2d 818 (First Circuit, 1978).

The District Court opinion included the following findings of fact:

The credible evidence is, and the Court finds the facts to be as follows: Plaintiff willingly accompanied her mother to the Turner home for Thanksgiving dinner, where she met and talked with Defendant Patrick who had been

hired and paid by Plaintiff's mother to convince Plaintiff to change her way of life. Plaintiff willingly listened, enjoyed dinner, napped, slept fitfully and, thereafter, determined to exit dramatically. Defendants and Mrs. Weiss indeed intended to change Plaintiff's mind by their actions, but the Court finds no credible evidence of improper action.

There are a number of reasons why Plaintiff's version of the facts which allegedly transpired at Defendant Turner's home is not credible. To begin with, her mother, who was terminally ill, was present as were a number of other persons when the supposed incident occurred. Although Plaintiff's mother's deposition was taken when she was known to be terminally ill, and was introduced as evidence, she was not asked to either corroborate or deny Plaintiff's account of what occurred at the Turner home.

In spite of the traumatic and vivid description of the events provided by Plaintiff, she suffered no treatable or apparent physical injury. The facts that she ate well, napped, and moved about at will prior to her "escape" are distinctly contrary to a claim of traumatic infliction of psychic injury.

Plaintiff alleges physical and emotional disturbance as a result of her experience. The Court, finds, however, that there is no credible evidence of such injury.

[PETITION, APPENDIX A, p. 19]

The testimony falls far short of proof that Plaintiff

suffered emotional disturbance caused by Defendants.

On the basis of all the evidence presented, the Court is not persuaded that Plaintiff's civil rights were infringed by Defendant's actions so as to constitute a violation of 42 U.S.C. §1985 (3) as alleged.

[PETITION, APPENDIX A, p. 20]

What occurred here was simply an effort, in private, to persuade a willing listener to disavow the tenets of the Unification Church.

[PETITION, APPENDIX A, p. 21]

The credible evidence in this action establishes that Plaintiff did not choose to avail herself of the remedy of not listening or departing. Instead, she chose to remain in the Turner home and hear out Defendants. She went so far as to praise them in their efforts to "deprogram" her. Plaintiff's assertions that she was compelled to listen or forced into the pretense of listening cannot be believed. Absent compulsion, freedom of speech and freedom of religion are not to be used as devices to achieve the denial of the same rights to others.

This Court cannot consider Plaintiff's alleged feigned acquiescence as establishing that either Defendant unlawfully deprived Plaintiff of her constitutional rights. By Plaintiff's own testimony, she gave the appearance of acquiescence and acceptance. Plaintiff seeks to excuse her apparent acceptance of Defendant's efforts by claiming

that it was created by intimidation, and, therefore, *ab initio*, illegal. Plaintiff's argument seems to be that in effect she successfully deceived Defendants, and therefore by Defendants violated her rights. This is too slender and too dangerous a distinction to form the premise for §1983(3) liability, particularly since Plaintiff's present posture may equally be explained by a desire to excuse, after the fact, her apparent acceptance of the effort to "deprogram" her to herself. Equally likely inferences concerning Plaintiff's behavior are not sufficient to carry Plaintiff's burden of proof.

Furthermore, the Court finds no credible evidence of assault and battery or false imprisonment. Her lack of apparent injury and subsequent voluntary commitment for four (4) days at Butler Hospital is evidence that any limitation upon her personal mobility was not her primary concern. Plaintiff has failed to prove a deprivation of any constitutional rights within the meaning of the Statute.

[PETITION, APPENDIX A., p. 23]

Plaintiff's proof fails to show the existence of a critical element, the existence of a classbased animus [footnote omitted]. While it may be true that Defendants disapprove of the views of the Unification Church, there is not sufficient evidence to suggest that this factor alone translates into the required animus under §1983(3). In fact, it was shown, and this court finds, that Defendants' actions were primarily, if not entirely, motivated by the



maternal concerns of Plaintiff's mother. Mrs. Weiss' actions, which resulted in her combination with Defendants, arose not from her abhorrence of the Unification Church *per se*, but rather arose directly from the solicitude which a mother holds for her daughter's health and well-being. Defendants, as agents of Mrs. Weiss, deprived their motivation from this same maternal solicitude.

[PETITION, APPENDIX A, p. 25]

It is thus clear from the opinion that the Court below simply did not believe the Plaintiff's claims and assertions, that the Court found no constitutional deprivations of any kind, that Plaintiff had not met her burden of persuasions as to the necessary elements of her causes of action.

### Reasons for Denying the Writ

#### I. That the District Courts Findings of Fact are not Clearly Erroneous and Should be Left Undisturbed.

The findings of fact embodied in the opinion of the trial court negate one or more of the requisite elements of each of the four separate causes of action alleged by Plaintiff.

The applicable standard of review is that set forth in F.R.C.P. 52(a)

On this appeal Plaintiff bears the heavy burden of showing that, in the words of their judge (now Attorney General) Bell, "...we should not hesitate to overturn those findings if we are

left with the definite and firm conviction that a mistake has been committed by the District Court." *Farrell Lines, Inc., v. Jones*, 530 F. 2d 7, at 20 (Fifth Circuit, 1976) citing: *Wade v. Mississippi Cooperative Extension Service*, 528 F. 2d 508 (Fifth Circuit, 1976).

However, in the *Wade* case, Judge Bell went on to say that "Any dispute as to the credibility of witnesses ... was for the trial court to decide. [citation omitted]," *Wade*, at p. 518. Cf. *Ayers v. Western Line Consolidated School District*, 555 F.2d 1309, (Fifth Circuit, 1977).

Here we are faced with a decision based on the facts adduced by Plaintiff at trial. It is not a case where Plaintiff has been denied her day, rather one in which her claims were given a *full* and *fair* hearing, and a thorough review on the record by the Appellate court. In all respects, both these courts gave full consideration to the issues presented and decided them on the basis of the substantial credible evidence before them.

Petitioner has presented nothing in the way of a clear error, or definite mistake that warrants the reexamination of the findings found and carefully affirmed. Petitioner can not on appeal merely allege that one factual evidentiary inference is more likely than another.

#### II. That the Court Need Not Reach the Claimed Constitutional Issues on These Facts.

This case is simply not one which requires the court exercise its discretionary and extraordinary jurisdiction.

Certiorari is not a tool to review evidence and determine specific evidentiary facts.

Clearly, Petitioner is asking this Court to find, what two previous courts, (one after a full trial, the other upon a thorough review of the record) could not find. A third review of these facts is unnecessary and inexpedient.

The facts as found below are entitled to great weight and credibility.

Furthermore, the issues determined were merely those between a dying mother and her concerns over the mental health and well-being of her daughter. Their lack of import and impact to those other than the immediate parties is clear. Thus the issues heretofore determined are of insufficient constitutional significance to warrant this courts attentions.

### **Conclusion**

Wherefore, the petition for Writ of Certiorari to review the judgment and opinion of the First Circuit should be denied.

Respectfully submitted,

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